CF0000064374

(2)

IN THE HIGH COURT OF THE JUDICATURE AT JABALPUR (M.P.)

Criminal Appeal No. 2585 /2000

APPELLANT : Mikhail Toppo S/o M. Toppo
In Jail aged about 48 years R/o Village Timorala P.S. Jashpur Nagar, Distt. Jashpur M.P.

(10295) 14/10/2k R.K. Jain

V e r s u s

RESPONDENT : The State of M.P. through P.S. Pakhanjur Distt. Kankar M.P.

Crime No. - 43/96
S.T. No. - 453/96
Under Section - 302 of I.P.C.
P.S. Pakhanjur Distt. Kankar M.P.

CRIMINAL APPEAL U/S 374 (2) OF Cr.P.C.

(26)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal NO. 2585/2000

Mikhail Toppo

Vs.

State of Chhattisgah

Judgment for consideration

Sd/-
1-7-2006

Hon'ble Shri Justice Fakhruddin

Sd/-
Fakhruddin
Judge

Post for 3-7-2006

Sd/-
DHIRENDRA MISHRA
Judge

27

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal NO. 2585/2000

Mikhail Toppo

Vs.

State of Chhattisgarh

Coram: **Hon'ble Shri Fakhruddin and**
Hon'ble Shri Dhirendra Mishra, JJ

Present: Smt. Kiran Jain, counsel for the appellant.

Shri U.N.S. Deo, Govt. Advocate/Additional Public Prosecutor, for the State

J U D G M E N T

Per Dhirendra Mishra, J.

Heard learned counsel for the parties.

2. The appellant has preferred this appeal under Section 374(2) of Code of Criminal Procedure as he is convicted by the judgment dated 16-8-2000 passed learned Additional Sessions Judge, Kanker in Sessions Trial No. 453/1996 under Section 302 of Indian Penal Code and sentenced to undergo imprisonment for life.

3. The case of the prosecution in brief is that Constable Meena Kumar of Special Armed Force of Pakhanjur Company lodged a report in Police Station Pakhanjur on 29-2-1996 at about 22.45 hrs to the effect that he was on the rear guard duty in the night from 9.30 to 12.00 hrs. He had exchanged his duty with Constable Mikhail Toppo at about 10.30 hrs in the night. When he was discharging his duty and in nearby, Constable Trilochan Prasad and Constable Abdul Majid Khan were sitting, at that time, Mikhail Toppo armed with 303 Riffle came there from Mess side. Constable Trilochan Prasad enquired as to how he was coming armed with riffle even after his duty hours, at that time Mikhail Toppo fired from his service riffle upon Abdul Majid Khan and

28

murdered him. He also chased the informant and Guard Commandant Trilochan Prasad with riffle. He took shelter in the police station and narrated the incident. At that time, Mikhail Toppo, Mess Commander Bhaiya Lal, Shiv Prasad, Vedram, M. Bahadur and Guard Commander Trilochan Prasad were present and they had seen the incident. The crime was registered. During investigation *Merg* intimation of Ex. P-8 was also recorded. The dead body of Abdul Majid Khan was sent for autopsy to Civil Hospital, Pakhanjur where Dr. M.C. Vyas P.W. 1 conducted post mortem over the dead body of the deceased and submitted his report of Ex. P-1. An inquest of Ex. P-10 was performed over the dead body of the deceased in the presence of the witnesses after due notice to the witnesses. Three live cartridges of 303 bore riffle and two empties were taken into possession vide Ex. P-12 from the custody of the accused Mikhail Toppo. His service riffle 303 was seized from the accused vide Ex. P-13. A blood stained shirt and full-pant of uniform was seized from the appellant vide Ex. P-14. Blood stained soil and plain soil were seized vide Ex. P-15. Sealed packet received from hospital containing blood stained Baniyan and a portion of the wound in the sealed packet was taken into possession vide Ex. P-16. A memo vide Ex. P-17 was sent to the Executive Magistrate requesting him to remain present during inquest over the dead body. The seized articles – blood stained soils, weapon of offence, live cartridges and empties etc. were sent for examination to the Forensic Science Laboratory vide Ex. P-18. The report of Forensic Science Laboratory is Ex. P-19-A. The certificate issued by the Company Commander, Pakhanjur regarding on-duty employees on the date of incident is Ex. P-20. After completing investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Bhanupratappur who in turn committed the case to the

(29)

Court of Session, Jagdalpur and same was received on transfer for trial by the learned Additional Sessions Judge.

4. Learned Additional Sessions Judge framed charge under Section 302 of Indian Penal Code against the appellant. The appellant adjured his guilt. Prosecution in order to establish the charges against the appellant examined as many as 17 witnesses, thereafter statement of accused under Section 313 of Code of Criminal Procedure was recorded in which the appellant denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. He also examined the defence witness No. 1 Kusum Das.

5. Learned Trial Court after hearing the Additional Public Prosecutor and counsel for the appellant convicted and sentenced the appellant as above.

6. Homicidal death of Abdul Majid Khan is not in dispute. Even otherwise from the evidence of P.W. 1 Dr. M.C. Vyas, who had conducted post mortem over the dead body of the deceased and submitted report Ex. P-1 and who had noticed entry wound and exit wound over the person of the deceased and who had opined that the cause of the death was shock, haemorrhage and injury to vital organs common cause, rupture of liver and right lung also ruptured, clot blood found Thoracic Cavity and the same was homicidal in nature, homicidal death of Abdul Majid Khan is established.

7. So far as involvement of the appellant in crime in question is concerned, the learned Court below after recording findings that the deceased Abdul Majid Khan died homicidal death and he died because of bullet injury from riffle and on the basis of eye-witness account given by P.W. 17 Constable Meena Kumar and other material, held the appellant guilty.

30

8. Learned counsel for the appellant submitted that there is no motive. The prosecution has not established any motive to the appellant for causing death of Abdul Majid Khan. Admittedly, the incident took place in the dark and as such there was no occasion for eye-witness Constable Meera Kumar to witness the incident and this aspect has also been overlooked by the Court below. It is further argued that even as per the prosecution case, at the relevant time, the appellant was discharging his official duty of Guard and in the absence of sanction under Section 197 of Cr.P.C. the whole prosecution is vitiated and, therefore, the impugned judgment cannot be upheld.

9. On the other hand, learned counsel for the State supports the impugned judgment.

10. We have heard the learned counsel for the parties. We have perused the material available on record, oral and documentary evidence as also the impugned judgment.

11. The 303 riffle and 3 live cartridges and two empties were seized from the custody of the appellant vide Ex. P-12 and P-13 in presence of witness Kusum Das and Preetpal Singh by Sub Inspector K.K. Nag. The seizure memo has been duly proved by P.W. 10 Preetpal Singh who has stated that the weapon of offence and the cartridges were seized from the accused. The statement of this witness finds support by the statement of Sub Inspector S.R. Nag P.W. 8 who had effected the seizure. The seized riffle was examined by Senior Scientist, Forensic Science Laboratory, Sagar who has given report Ex. P-19A and opined that the riffle in question was in order, it was recently fired and on comparison, he has further opined that seized empties were fired by the seized riffle. Thus from the above witness, it is proved that the empties which were seized from the appellant were fired from the riffle seized

(31)

from the appellant. This fact finds further corroboration by the certificate of Ex. P-20 which shows that the above riffle was issued to the appellant. Dr. M.C. Vyas who has conducted post mortem over the dead body of the deceased and has found injuries as described above, has also stated that in his post mortem report while describing the injuries, he has mentioned that the above injuries were caused by bullet. So far as involvement of the appellant in this offence is concerned, P.W. 17 Constable Meena Kumar who has lodged the F.I.R. of Ex. P-7 has categorically stated that at the time of incident Mikhail Toppo fired at Abdul Majid Khan in his presence. At that time he was in the Rear Guard duty and had taken this duty from Mikhail Toppo and he was sitting over the wooden plaque near Mahua tree along with Trilochan and Majid Khan. At that time at about 11.00 P.M. accused came from Mess side. On being interrupted by Trilochan that how he was coming with riffle as he was not on duty, he came there with riffle and straightway fired at Majid Khan who collapsed there. Thereafter Trilochan and this witness went to the police station and narrated the incident. This witness was unmoved in the cross-examination and defence has not been able to elicit anything which makes the evidence of this witness untrustworthy or unreliable. The statement of this witness further finds corroboration from the statement of P.W. 5 Constable Vedram who has also stated that he was on the night duty on the date of incident along with Meena Kumar, Shivprasad and the deceased constables. Both the deceased constables were sitting beneath Mahua tree whereas he was sleeping in the guard room. At about 8.30 he slept after taking his meals. One hour thereafter Guard Commandar Trilochan came there and informed that the accused has fired at Majid and he further stated to take position with your riffle. The statement of

(32)

above witness is further corroborated by promptly lodged F.I.R. as also from the post mortem report. So far as arguments of the counsel for the appellant that the prosecution has failed to prove motive in the instant case is concerned, it is established law that where there are eye-witnesses to the incident, motive losses all its significance.

12. In the case of Bikau Pandey and others –v- State of Bihar reported in (2003) 12 SCC 616, the Hon'ble Supreme Court has held in para 13 that even if the absence of motive as alleged is accepted, that is of no consequence and pales into insignificance when direct evidence establishes the crime.

13. The second argument advanced by the learned counsel for the appellant that the alleged incident is of the night and, therefore, it was not possible for the witnesses to identify the appellant as perpetrator of the offence. This argument also has no substance inasmuch as the witnesses are constables in the same company, they were engaged in the night guard duty and familiar with each other. The fire was shot from a close range as stated by P.W. 17 Meena Kumar. In the aforesaid circumstances, the question of identity on the ground that it was night is without any substance and there is evidence available on record to show that at the relevant time, the place was illuminated with electric bulbs. The third argument advanced by the counsel for the appellant that the offence if any is committed by the appellant while he was on duty of the rear guard and as such he could not have been prosecuted without sanction from the competent authority as per the provisions under Section 197 of Cr.P.C. is concerned, the above argument is also without substance because the appellant had left the place after completing his duty. He had handed over his charge to P.W. 17 Constable Meena Kumar and thereafter he came there armed with riffle

(33)

after obtaining the same from Mess. Even otherwise it was no part of his official duty to fire at his fellow constable who was on guard duty and as such the act alleged against the appellant had no nexus whatsoever with his official duty and in the aforesaid circumstances, no sanction as per provisions of Section 197 of Cr.P.C. was necessary for prosecuting the appellant. However from perusal of the record as also from the evidence, we find that this defence was never taken by the appellant during trial and even in the memo of appeal no such ground is there, and same is raised for the first time during argument.

14. Thus on the basis of above discussions, we are of the considered opinion that the prosecution has established the charge against the appellant by adducing reliable evidence and the Court below has correctly held the appellant guilty under Section 302 of I.P.C. and sentenced as above by the impugned judgment.

The appeal fails and is dismissed.

Sd/-
Fakhruddin
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Pathak